

IN THE SAN FRANCISCO
SUNSHINE ORDINANCE TASK FORCE

Anonymous

v.

José Cisneros, Office of Treasurer-Tax
Collector, Theresa Buckley

Reply (Corrected)

Dec. 26, 2019

SOTF No.

19131

REPLY TO RESPONSE

On Dec. 26, Respondents filed their formal response to my complaint. I reply below.

ALLEGATIONS

- **A1. SFAC 67.26** - A portion of future calendars (R3) were withheld, with justification, such as with the Mayor's Office. However, minimal withholding was still not performed. At least some information was withheld, by redaction or an entire record, which is not exempt. See SOTF 18075, and also pending SOTF 19103 and SOTF 19112.

This allegation is maintained. Respondents have failed to demonstrate that *every single* portion of the fully-redacted pages is exempt. Given that I know what is on those page (both from having seen them already, and because other agencies freely disclosed their copy of the same record), I asserted that at least some portion of the page was disclosable and gave examples. See also my replies regarding A4 and A5 below (which are incorporated by reference herein), as the Respondents' citation to *Times Mirror Co.* is unlawful in San Francisco.

- **A2.** [This allegation is withdrawn. Respondents stated that the Nov. 13 meeting, if it existed, was deleted prior to my request.]
- **A3.** [This allegation is withdrawn. Respondents stated that the Nov. 13 meeting, if it existed, was deleted prior to my request.]

- **A4. SFAC 67.27** - Some information was withheld using a justification not allowed by SFAC 67.27 (for example, they are prohibited by SFAC 67.24, or they are not laws or court cases dictating exemptions or civil or criminal liability).
- **A5. SFAC 67.24** - An exemption justification was used that is prohibited in CCSF, including but not limited to drafts, public interest balancing test, or deliberative process.

Respondents failed to deny these allegations A4 and A5, so the Task Force should take them as proven.

First, Respondents stated that the court “reasoned” that future scheduling information would “enable the reader to know in advance and with relative precision when and where the Governor may be found” *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325, 1346 (Cal. 1991). In reality, that is an assertion by (and direct quote from) the Governor’s director of security.

Second, Respondents apparently failed to read the court’s introduction to the same section they cited (emphasis mine): “Our conclusion that the trial court properly denied the Times's request **under the public interest exemption (§ 6255)** finds additional support in the evidence relating to the potential threat to the Governor's physical security.” *Id.* at 1346. The Court even states that it considered (emphasis mine) “the threat to the Governor's personal security, also **pursuant to section 6255.**” *Id.* at 1336.

This is Govt Code 6255, which is explicitly prohibited (along with all similar exemptions) under SF Admin Code 67.24(g) and (i).

I urge the Task Force again to consider an admonishment regarding California Rule of Professional Conduct 3.3 regarding proper citation by attorneys to laws and cases in all of its procedures and hearings.

As much as the City wishes for it, there is simply no general “security of officials” exemption in the CPRA (only a "security procedures" of police agency exemption), and the Supreme Court fashioned in *Times Mirror* an exemption for the Governor's calendars specifically using the public-interest balancing test GC 6255 and the deliberative process privilege exemption -- all of which are prohibited as exemptions in San Francisco.

- **A6. SFAC 67.27, 67.21(k), GC 6253(b)** - Exact (non-metadata) copies were not provided, even though they were requested. Non-metadata information from the actual record have been withheld from us, without any justification, because the records were physically printed and scanned to PDF, instead of directly converted to PDF.

Respondents admit that they withheld the color and the exact copies of images without justification (violation of SFAC 67.27). Providing records after I file complaints cannot cure a violation. I did already in fact request exact copies on Dec. 7. Respondents failed to provide exact copies (SFAC 67.21(k), GC 6253(b)). I do not have to ask yet another time. Respondent must correct its records production processes to ensure **every** requestor receives **all** information in every record, unless they have justified its withholding - that is precisely what I am auditing.

Respondents still failed to provide hyperlinks even in their new production, and have failed to provide any justification for their withholding. I know the City knows how to do this (Respondents may wish to consult with the Dept of Human Resources who correctly produced them for a substantially identical records request).

- **A7. SFAC 67.26** - The non-exempt metadata portion of one or records was withheld, with justification, but some of the metadata withheld is not in fact exempt and must be provided.
- **A8. SFAC 67.21(l), 67.27, GC 6253.9** - The original electronic format or the requested “easily generated” format were withheld, without justification.

These allegations are maintained. As the Task Force knows, its Technology Committee recommended to the full SOTF on Dec. 17 a policy that metadata should be treated like any other public record and only the minimal portion that actually ***is specifically exempt*** may be withheld (not all of the metadata), and with justifications for each and every piece of metadata withheld.

Respectfully submitted,

ANONYMOUS
Complainant/Petitioner